**IN THE HIGH COURT OF JUDICATURE FOR**

**RAJASTHAN AT JODHPUR**

**::::**

**J U D G M E N T**

**Kanti Lal Nayak**
**Vs.**
**State of Rajasthan & Ors.**

**S.B. CIVIL WRIT PETITION NO.1739/2003 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.**

**DATE OF ORDER :: 17th August, 2006**

**PRESENT**

**HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ**

Mr.Harish Purohit, for the petitioner.
Mr.Rameshwar Dave, Dy.Govt. Advocate.
Mr.S.G. Ojha, for the respondent.

**BY THE COURT**

This writ petition has been filed by Kanti Lal Nayak who claims himself to be a member of Scheduled Caste Community. He claims that his sub-gotra is 'Labana' which is part of the 'Nayak' community. He has placed on record affidavits of several

persons who claim to maintain the Genealogy of 'Nayak' community.

The controversy arose when the Tehsildar, Dungarpur passed an order dated 19.04.2001 stating therein that the petitioner does not belong to 'Nayak' community as he was 'Labana' by caste and, therefore, certificate of Schedule Caste issued to him was cancelled. Being aggrieved thereby, the petitioner preferred S.B. Civil Writ Petition No.1602/2001. This Court by an interim order dated 27.04.2001 directed the petitioner to move an application before the Tehsildar, Dungarpur for re-consideration of the order dated 19.04.2001. Thesildar, Dungarpur after hearing the petitioner finally prepared a report and submitted to this Court. In this report, he on examination of the entire relevant record held that caste of the petitioner was 'Labana' which falls under Other Backward Class (OBC). He therefore passed the order dated 19.04.2001 cancelling thereby the Scheduled Caste certificate of the petitioner. The writ petition was disposed of by this Court on 03.01.2002, in the judgment the Court took note of the fact that the Tehsildar, Dungarpur in his report has also not considered various documents and has also not recorded evidence. The Court therefore directed that it was desirable that the liberty was given to the petitioner to raise all factual and legal issues before

the competent authority and produce evidence. In view of the fact that the matter relates to employment of the petitioner, the competent authority was directed to decide his case expeditiously preferably within a period of three months.

Tehsildar, Dungapur again under took a fresh inquiry. The petitioner submitted all the documents and evidence he wanted to rely upon. Tehsildar, Dungapur by evaluating and analyzing the entire evidence finally by his order dated 08.05.2002 concluded that the petitioner was not a member of Scheduled Caste Community and, therefore, the earlier order by which the certificate issued to him to the said effect was cancelled was correct. The said order has been challenged by the petitioner in the present writ petition.

Learned counsel for the petitioner has relied upon a Single Bench Decision of this Court in Shiv Shanker vs. The State of Rajasthan & Ors being S.B. Civil Writ Petition NO.2211/2003 and has argued that in this case also this Court while relying on an earlier Division Bench judgment in Dinesh Chandra vs. The State of Rajasthan held that the Sadh Community was included in the list of Scheduled Caste Category in the Scheduled Castes Order, 1050 as amended in the year 1956.

On the other hand, the respondents have contested the petition and have filed detailed reply to the writ petition. In the reply, it has been stated that the order dated 08th May, 2002 has now been passed by the Tehsildar, Dungarpur after hearing all the parties and on consideration of entire material and evidence on record. It has been denied that the petitioner is a member of Scheduled Caste. The respondents stated that Gram Panchayat MADA to which the petitioner belongs does not have a single seat of ward member reserved for Scheduled Caste candidate despite the fact that seizable population of that village belonging to 'Labana' community. It has been stated that the Tehsildar, Dungarpur has conducted an inquiry in which all concerned were given full opportunity to raise legal as well as factual issued and adduce evidence. On the conclusion of such inquiry, Tehsildar held that petitioner belongs to Labana, Banjana, Baldia group which have been included in OBC Category. It has been stated that the ancestors of the petitioner used to carry luggage on bullocks. A 'Balad' consisted of 100 to 1000 bulls. It was also called 'TADA'. Every Balad had one chief called 'Nayak' where as parental business of Thori's caste was theft and burglary. It was further clarified that Nayak of Thori caste are not Banjara because in Banjara the owner of 'Balad' (a group of 100 to 1000 bulls) was called Nayak whereas in Thori caste, the owner of the house was 'Nayak'. After detailed inquiry and examination of

evidence, a speaking order was passed by the Tehsildar, Dungarpur in compliance of directions of this Court.

It has been further stated that the State Government has authorized Tehsildar to issue Scheduled Caste Certificate and authority to issue a certificate has inherent power to cancel if subsequently it is found to have been issued against facts. In this regard, it is further submitted that an agriculturist belonging to Scheduled Caste cannot sell his agricultural land to non-scheduled Caste person. Such sale is void being violative of Sec.42(b) of the Rajasthan Tenancy Act, 1955. Neither Registering officers under the Registration Act, 1908 can register such document nor Revenue Officer can mutate such transaction of land. The State during the course of enquiry produced number of copies of registered document and mutation by which the persons belonging to the caste of the petitioner sold their land to non-scheduled caste persons and Revenue Officers attested mutations of such transaction. It is further submitted that all the present and past public representatives belonging to the caste of the petitioner such as Sarpanch, Ward Member, Panchayat Samiti Member were elected from general seats. Among them, Sh. Bheem Raj Labana, Sh. Pyar Chand Labana were former Sarpanch of Gram Panchayat Mada to which the petitioner belongs and at present Sh. Kanti Lal and Mrs. Mewa who belongs

to caste of the petitioner. They have not been elected from the seat reserved for Scheduled Caste. Surprisingly, no seat of ward member or sarpanch is reserved for Scheduled Caste.

I have considered the arguments of the parties and perused records. So far as the judgment relied upon by the petitioner in the case of Shiv Shanker is concerned, this judgment was based on earlier Division Bench judgment of this Court. The issue involved in the case was that the 'Sadh' community was included in the category of OBC or in the Scheduled Caste. The Court noted that originally 'Sadh' community was shown in the OBC but latter on the Scheduled Castes Order, 1950 was amended in 1956 and this community was included in the list of Scheduled Caste. In that contest the learned Single Judge observed as under:-

> "5. Where the President's Notification declares a caste to be Scheduled Caste for the purposes of certain specified States, no Court can direct that caste to be declared Scheduled Caste in relation to another State.
>
> 6. Thus, it can be concluded that the Presidential Order cannot be challenged or substituted by any other authority except that power of amendment of the President's order made under Clause (i) of Article 341 has been given to Parliament as per clause (2) of Article 341. Such amendment cannot be made by the Court, even indirectly. The entires in the Presidential Order has to be taken as final. It

> is not open to the Court or State to make any addition or substitution in the Presidential Order. The Presidential Order can only be amended by legislation by Parliament."

In the present case, Tehsildar held thorough inquiry under the directions of this Court and in doing so he has taken into consideration the entire evidence and material supplied by the petitioner as also by the Government. This is essentially a question of fact that whether 'Labana' is a sub-caste of 'Nayak' or is an independent Caste. The respondents are claiming that 'Labana' community has been included in category of OBC and the petitioner is claiming that 'Labana' being a sub-caste of 'Nayak' community, may be taken as Scheduled Caste. Such disputed questions of fact cannot be appropriately gone into and adjudicated upon by this Court. The only remedy in such like cases is to direct the parties to approach the Civil Court which has got the mechanism of recording evidence and where the parties would have the liberty to lead evidence both oral and documentary. The witnesses produced by either parties may be subjected to cross-examination and the documents in rebuttal also can be filed in respect to the documents filed by each other.

In these circumstances, I do not consider it to be a fit case where this Court in its writ jurisdiction should make any

interference on the finding of fact recorded by the Tehsildar, Dungapur.

The writ petition is therefore dismissed.

**[MOHAMMAD RAFIQ],J.**

Ashwini/-